

Message Text

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ACTION NEA-10

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FM AMEMBASSY NEW DELHI

TO SECSTATE WASHDC 5397

C O N F I D E N T I A L NEW DELHI 5746

FOLLOWING REPEAT MADRAS 0709 SENT ACTION NEW DELHI

INFO CALCUTTA/BOMBAY 20 APR 76.

QUOTE:

C O N F I D E N T I A L MADRAS 709

E.O. 11652: GDS

TAGS: PINT, IN

SUBJECT: MADRAS HIGH COURT DISMISSES DMK PETITION

REF: A) MADRAS 618; B) MADRAS 495

1. A DIVISION BENCH OF THE MADRAS HIGH COURT CONSISTING OF CHIEF JUSTICE P.S. KAILASAM AND JUSTICE V. BALASUBRAHMANAN ON APRIL 19 DISMISSED THE WRIT PETITION FILED BY DMK GENERAL SECRETARY V.R. NEDUNCHEZHIAN CHALLENGING THE IMPOSITION OF PRESIDENT'S RULE IN TAMIL NADU. THE COURT HELD (A) THAT THE PETITION HAD BECOME MOOT AFTER MARCH 21 WHEN THE TERM OF THE TAMIL NADU LEGISLATIVE ASSEMBLY LAPSED AND (B) THAT THE PETITIONER HAD NO LOCUS STANDI TO FILE THE PETITION AS A FORMER DMK MINISTER OR AS GENERAL SECRETARY OF THE DMK. CHIEF JUSTICE KAILASAM DID NOT GO INTO THE MERITS OF THE CASE, MAKING IT CLEAR EARLY IN THE HEARING THAT HE WOULD DISMISS THE PETITION ON THE TECHNICALITY THAT NEDUNCHEZHIAN HAD LOST HIS RIGHT TO PETITION THE COURT AS AN EX-MINISTER OR AS GENERAL SECRETARY OF THE DMK AFTER MARCH 21. THE COURT INDICATED IT WOULD PERMIT THE PETITIONER TO FILE A FRESH SUIT AS AN ORDINARY CITIZEN, BUT WE DO NOT KNOW WHETHER NEDUNCHEZHIAN WILL DO SO.

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PRESUMABLY HE WILL CONSULT WITH THE DMK LEADERSHIP AND BE GUIDED

BY ITS DECISION.

2. OF LATE WE HAD BEGUN TO EXPECT DISMISSAL OF THE DMK PETITION SINCE IT HAS BEEN RUMORED IN LEGAL CIRCLES HERE THAT THE NEW CHIEF JUSTICE ASPIRES TO A SEAT ON THE SUPREME COURT AND IS ACCORDINGLY ANXIOUS TO PLEASE NEW DELHI AND THE PRIME MINISTER. CERTAINLY THE ALMOST CURSORY WAY IN WHICH HE DISMISSED THE PETITION LED OBSERVERS TO CONCLUDE THAT HE HAD PREJUDGED THE CASE. AT THE SAME TIME, HIS HANDLING OF THE CASE APPEARS TO BEAR OUT OUR CONCLUSION THAT THE EARLY POSTPONEMENT OF THE CASE AND THE REMOVAL OF THE FORMER CHIEF JUSTICE WERE LINKED TOGETHER. LOCAL LEGAL SOURCES FEEL STRONGLY THAT THE FORMER CHIEF JUSTICE WOULD HAVE ALLOWED THE PETITION, FURTHER STRENGTHENING THE CONCLUSION NOW CURRENT IN MADRAS THAT HE WAS FORCED OFF THE COURT BEFORE THE CASE WAS TO BE HEARD.

3. (AS A FOOTNOTE, A CONGEN POLITICAL ASSISTANT, HIMSELF AN ATTORNEY AND PRESENT AT THE HEARING, FELT THAT KAILASAM DID NOT TAKE THE CASE AS SERIOUSLY AS HE SHOULD HAVE. OTHER ATTORNEYS WITH WHOM OUR POLITICAL ASSISTANT TALKED FELT THE SAME WAY.)

4. IF THE DMK DECIDED TO HAVE NEDUNCHEZHIAN PURSUE THE CASE AS A PRIVATE CITIZEN, HE CAN DO SO ONLY AFTER THE COURT RECONVENES IN JUNE AFTER THE SUMMER RECESS. MEANWHILE, WE UNDERSTAND THAT THE DMK PETITION FILED IN DELHI CAME UP FOR HEARING APRIL 19 BUT WAS ADJOURNED SINCE BOTH ATTORNEYS WERE IN MADRAS THAT DAY.
MCCASKILL

UNQUOTE.
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